



Office of the Attorney General
State of Texas

May 11, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Jeff Hankins
Legal Assistant
Program Division, Legal Services, 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR92-208

Dear Mr. Hankins

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15250.

You have received a request for information relating to two third-party administrators. Specifically, the requestor seeks "copies of the complete license application for each company, along with copies of any complaints filed against said companies." You advise us that some of the requested information has been made available to the requestor. You claim, however, that information relating to anticipated litigation with the two third-party administrators is excepted from required public disclosure by section 3(a)(3) of the Open Records Act and that portions of that information are also excepted by sections 3(a)(1), 3(a)(7), and 3(a)(11).

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various

political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA) V.T.C.S., article 6252-13a. Open Records Decision Nos. 588 (1991); 368 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

Article 1.33(a) of the Insurance Code provides that the department is generally subject to APTRA. You advise us that the requested information relates to an investigation of two third-party administrators for possible violations of state insurance laws and that the department anticipates that the investigation will culminate in a contested administrative case subject to APTRA with the named administrators as parties. Accordingly, we conclude that litigation may be reasonably anticipated. You indicate that the attorney representing the department has determined that the requested documents relate to the anticipated litigation. We agree. Therefore, the information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-208.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon", with a stylized flourish at the end.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/GK/mc

Ref.: ID# 15250
ID# 15382

cc: Ms. Joan M. Turner
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